

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
RUBY RIVER BASIN (41C)

* * * * *

Charles C. Hill, et al.

Plaintiff,

vs.

Fred Ellinghouse, et al.

Defendant.

DCERT-0004-WC-2021

41C 30133316

Certified From:

Montana Fifth

Judicial District Court

Cause No. DV-1903-741

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

INTRODUCTION

William Fraser ("Fraser") claims an existing water right to use water from Indian Creek in Madison County for stock water use. In 2021, Fraser made a call on Indian Creek by asking the water commissioner to curtail water diversions to upstream junior water users. Fraser then sued in District Court arguing the water commissioner wrongfully ignored the call. Bradley Livestock LC ("Bradley") moved to dismiss the District Court complaint. The District Court certified the case to the Water Court for a determination of existing water rights as necessary to resolve the distribution controversy.

The Water Court now makes these Findings of Fact and Conclusions of Law and provides a tabulation based upon the evidentiary and procedural record, and the issues as framed by the parties and the District Court's certification.

PROCEDURAL BACKGROUND

This case arises out the District Court case *Hill v. Ellinghouse*, Cause No. DV-1903-741. On August 26, 2021, Fraser filed a dissatisfied water user complaint in the Montana Fifth Judicial District Court, Madison County. The District Court docketed Fraser's complaint in the case *Hill v. Ellinghouse*, Cause No. DV-1903-741. *Hill v. Ellinghouse* is the ongoing proceeding to administer water rights on Indian Creek under a 1905 district court decree.

Fraser's complaint alleged Del Bieroth ("Bieroth"), the district court-appointed water commissioner, was not properly distributing water from Indian Creek. Specifically, Fraser argued Bieroth failed to honor Fraser's calls requesting curtailment of water delivery to water users junior to Fraser during times of shortage. Bradley responded to the District Court complaint. The District Court certified the case to the Water Court. (Doc. 1.00). After certification, the Water Court held a conference with the parties, and provided them the opportunity to frame the issues before the Water Court. The Water Court issued an Order Defining Scope of Certification. (Doc. 9.00). The Order states:

[T]his certification proceeding is limited to the determination of claim 41C 30133316 as necessary to include the claim on a tabulation of water rights to be provided to the district court, subject to resolution of any objections to the claim raised in this proceeding. (Doc. 9.00, at 5).

The parties then cross-moved for declaratory rulings and summary judgment. Bradley's motion asked the Court to (1) determine the priority date for claim 41C 30133316 cannot be earlier than March 26, 1916; (2) determine the burden of proof shifted to Fraser to prove the elements of claim 41C 30133316; and (3) add an information remark to claim 41C 30133316 stating it cannot be the basis for a call on junior water rights after the "high water season." Fraser's motion asked the Court to decree the elements of claim 41C 30133316 as Fraser claimed them. The Water Court

denied the motions. (Doc. 32.00); *Hill v. Ellinghouse*, 2022 Mont. Water LEXIS 544 (“Order on Pending Motions”). The Court made the following rulings:

1. March 26, 1916 is not the earliest priority date the Court can decree for claim 41C 30133316 because issues of material fact exist as to whether the water right was severed and reserved from a sale of property that occurred on that date.
2. The undisputed facts did not overcome the prima facie status of the elements of claim 41C 30133316 and shift the burden of proof to Fraser to prove the elements.
3. Questions of material fact exist as to whether the Court must include an information remark on claims 41C 30133316 limiting its period of use and authority to call junior water rights after the end of seasonal high water.
4. Bradley retained the rights to challenge the elements of claim 41C 30133316 at an evidentiary hearing.

The parties agreed on a Prehearing Order identifying issues in dispute, which the Court approved. (Doc. 39.00). The Court then conducted a three-day evidentiary hearing in Virginia City, Montana. After the hearing, the parties filed proposed findings of fact and conclusions of law. (Doc. 62.00 - Bradley Proposed Findings of Fact and Conclusions of Law); (Doc. 64.00 – Fraser Proposed Findings of Fact and Conclusions of Law). Bradley also filed a supporting brief. Fraser elected not to. Fraser did, however, file a response to Bradley’s brief. (Doc. 65.00). Bradley also filed a “Brief in Response to Fraser’s Proposed Findings of Fact and Conclusions of Law.” (Doc. 67.00). Fraser moved to strike this brief as outside of what the Court ordered. (Doc. 68.00). The Court denied Fraser’s motion. (Doc. 71.00).

FINDINGS OF FACT

Fraser Property and Water Right Claim 41C 30133316

1. On June 28, 2019, Fraser filed water right claim 41C 30133316 on the form for exempt stock use rights. The claim form describes direct from source stock water use

from Indian Creek with a claimed priority date of June 11, 1865. Fraser supported the claim with a letter Fraser authored and with several other documents. (Ex. 8).

2. On October 21, 2019, Fraser submitted to the Department of Natural Resources and Conservation (“DNRC”) an amended statement of claim. In the amendment, Fraser modified the claimed priority date to June 11, 1864. Fraser supported the amended claim with another letter. (Ex. 7).

3. DNRC returned the amendment to Fraser stating the form “is not notarized and as such will not be processed.” (Ex. 7). The version of the amendment in evidence is notarized. (Ex. 7, p. 3).¹ Bradley did not challenge the validity of Fraser’s amendment.

4. The claimed place of use and the point of diversion for claim 41C 30133316 are in the Ruby River Basin (Basin 41C). Although the Water Court previously issued a temporary preliminary decree (“TPD”) for Basin 41C, the TPD did not include exempt rights, so claim 41C 30133316 has not been included in a prior Water Court decree. The Water Court has not yet issued a preliminary decree for Basin 41C.

Fraser Property Description and Early Chain of Title

5. The claim form Fraser filed for claim 41C 30133316 describes the point of diversion and place of use as within the southwest quarter of the northeast quarter of Section 30, Township 4 South, Range 5 West, Madison County (for ease of reference, all subsequent references to “Section 30” are to the Section 30 in this township, unless specifically described otherwise). The claim form identifies Fraser as the owner of the described property. (Ex. 8).

6. Fraser’s property is more particularly described in a warranty deed recorded at Book 442, Page 894, Doc. No. 077491, records of Madison County. (Ex. B-25). Fraser’s property is approximately 34 acres in size.

7. Fraser is the successor in interest to William and Ellen Tiernan. During the later part of the 1880s, the Tiernans assembled a ranch that included land in the north half of Section 30. The Tiernans acquired their property in Section 30 through two direct

¹ Fraser did not include Bates stamp numbers on his exhibits, so the page number references for Fraser’s exhibits are to the page number of the pdf of each exhibit.

patents from the United States, and by a deed from the grantee of a third patent from the United States.

8. On July 30, 1872 (recorded February 12, 1887), the United States issued a patent (the “Morrill Act Patent”) to Andrew McCenan. (Ex. 8, p. 18; Ex. B-1). The text of the patent says the United States issued it pursuant to the Act of July 2, 1862. The Act of July 2, 1862 is the “Act donating Public Lands to the several States and Territories which may provide Colleges for the Benefit of Agriculture and the Mechanic Arts,” commonly referred to as the “Morrill Act.” 12 Stat. 503C Ch. 130, L. 1862. The Morrill Act Patent described the following land:

South half of the Northwest quarter, and the Southwest quarter of the Northeast quarter of Section 30 in Township 4 South of Range 5 West and other lands.

The property described in the Morrill Act Patent includes the property Fraser now owns.

9. On December 10, 1868, George Orr and Andrew McCune executed a deed to Ellen Tiernan for 320 acres of land in Madison County. The deed describes the property by reference to other adjacent properties. The deed does not contain a legal description tied to the public land survey system. The deed was not recorded until October 12, 1886, nearly 18 years later. (Ex. 8, p. 19).² Andrew “McCune” appears to be the same person as Andrew “McCenan.” (Tr. 2:235:10-12).³

10. On December 10, 1880 (recorded on January 5, 1882), the United States issued a patent (the “Homestead Act Patent”) to William Tiernan. The text of the patent says the United States issued it pursuant to the Act of May 20, 1862. (Ex. 8, p. 17; Ex. B-3). The Act of May 20, 1862 is the Homestead Act. Act of May 20, 1862, 12 Stat. 392, *repealed*, Oct. 21, 1976. The Homestead Act patent described the following land:

² Exhibit 8 is Fraser’s statement of claim and attachments. Fraser attached abstracts of various recorded documents. Exhibit B includes copies of the original recorded documents, many of which are difficult to read due to copy quality and original penmanship.

³ Citations to the hearing transcript (“Tr.”) follow this protocol: “[hearing day]:[page]:[line number(s)]”.

North half of the Northwest quarter of Section 30 in Township 4 South,
Range 5 West and other lands.

The land specifically described in this patent does not include the Fraser property. Rather, it describes property northwest of what now is the Fraser property.

11. The United States issued another patent (the “Cash Entry Patent”) for land in Section 30 on November 10, 1882 (recorded on February 12, 1887), also to William Tiernan. The patent was issued pursuant to the Act of April 24, 1820. This statute is the Cash Entry Act of April 24, 1820, 3 Stat. 566; Ch. 51, L. 1920. (Ex. 8, p. 12; Ex. B-3, at BL 014).⁴ The Cash Entry Patent described the following approximately 80 acres of land:

The East half of the Northeast Quarter of Section 30, in Township four
South of Range five West and other lands.

The land described in the Cash Entry Patent does not include the Fraser property. It describes land east of what now is the Fraser property.

12. In addition to the patent documents and the deed to Ellen Tiernan, the record includes several other documents pertaining to the property the Tiernans assembled in Section 30. On June 11, 1869, William Tiernan executed a “Declaration of Homestead” that also describes 320 acres of land in Madison County. The Declaration was recorded the next day. (Ex. 8, p. 20). The precise 320 acres cannot be determined from the text of the document because it describes property by referencing adjacent properties owned by third parties, not by reference to the public land survey system.

13. On December 20, 1878, Henry Morier deeded to William Tiernan an undivided one third interest in certain water rights from the Ruby River. The deed was recorded on January 27, 1881. (Ex. 8, p. 24).

14. In April 1892, after William Tiernan died, the Tiernan family conveyed their property in the north half of Section 30 to Maria Elizabeth Edelman (“Edelman”). The property described in the deed to Edelman covers the land described in all three of the patents issued by the United States. The deed also included a specific reference to

⁴ Citations to the pages in exhibits offered by Bradley and admitted are by the shortened Bates number, with “BL” as the prefix.

water rights from the Ruby River. The deed did not reserve any water rights to the Tiernans as grantors. (Ex. 8, p. 22; Ex. B-6).

1905 Hill v. Ellinghouse Decree

15. In 1905, Montana State District Court Judge Lew L. Callaway conducted a water rights trial in the Montana Fifth Judicial District Court, Madison County, in the case *Hill et al. v. Ellinghouse et al.*, Case 741. The case bears the same cause number as the District Court proceeding that led to this certification.

16. Following the trial, Judge Callaway entered findings of fact and conclusions of law decreeing water rights from Indian Creek to various parties (the “*Hill Decree*”). (Ex. C). Numerous persons claiming Indian Creek water rights were parties in the case as plaintiffs or defendants.

17. Edelman, the successor to the Tiernans, filed a Complaint in Intervention asking to participate in the case. (Ex. P). In her Complaint, Edelman provided the following legal description of “farming lands” she owned in Madison County:

The North half of Sec. 30, Township 4 South of Range 5 West; and the East half of the Northeast quarter of Section 25 in Township 4 South of Range 6 West, containing in all three hundred ninety-nine & 36/100 (399.36) acres of land. (Ex. P, ¶ III-VII, BL 330).

The land Edelman described in her Complaint includes the land now owned by Fraser in Section 30. Section 25 is west of Section 30. The land Edelman described does not include any property in Section 29, which is east of Section 30.

18. Edelman’s Complaint alleged her predecessors constructed a ditch and used a natural channel of Indian Creek as a water source as of 1864. The language about using the natural channel is handwritten on the typed document. (Ex. P, ¶ V and ¶ VI, BL 330-331). The Complaint described water use for “irrigating said lands above described, and for other useful and beneficial purposes.” (Ex. P, ¶ VI, BL 331). Edelman’s Complaint asked the District Court for relief that included:

That in order to avoid a multiplicity of suits and finally to settle and determine all of the rights of all of the parties claiming an interest in and to the waters of said Indian Creek for irrigating and other useful and beneficial

purposes, it is necessary and proper that the claims and demands of this intervenor, Maria E. Edelman, in and to said waters be adjudicated in this action, and that she be allowed to file this complaint.

(Ex. P, ¶ VIII, BL 331-332).

19. The District Court granted Edelman's motion to intervene. The Court then decreed the water rights of the various parties involved in the case, including Edelman. As to Edelman, the District Court found she used water from Indian Creek on the lands she described in her Complaint "for irrigating said lands and for other useful and beneficial purposes." (Ex. C, Findings of Fact ¶ 6, at BL 087).

20. The District Court did not accept Edelman's contention asserting an 1864 priority date. Instead, the Court decreed two water rights to her. The first decreed 50 miner's inches of water with an April 20, 1866 priority date. The second decreed 100 miner's inches with a June 1, 1896 priority date. (Ex. C, ¶ 6).

21. The *Hill Decree* set conditions on the two water rights decreed to Edelman by including the following provision:

The Court finds, however, that when the high, or flood, waters subside the waters of said Indian Creek sink about two miles above the lands of the Intervenor, and that after July fifteenth of each year no water if allowed to remain in said creek, after the waters needed by the prior appropriators is taken out, will reach the intervenor in any useful quantity, if any whatsoever will reach her in any season after that date. If, in any season, it be ascertained at any time that the amount of water properly apportioned to plaintiff and which she would be entitled to if it would reach her is so small in quantity as not to be beneficial to her, then the water is to be distributed to other appropriators who may make a beneficial use thereof.

(Ex. C, ¶ 6).

Subsequent Property Conveyances

22. On April 18, 1907⁵ (recorded June 6, 1907), less than two years after the District Court entered the *Hill Decree*, Edelman conveyed to Homer McCullough the

⁵ The document is dated April 18, 1907, but the notary block suggests Edelman signed it on April 20, 1907.

north half of Section 29 and the north half of Section 30. (Ex. B-7). Section 29 is the section immediately east of Section 30. The portion of the property in Section 30 described in this deed also is described in the Complaint Edelman filed in the *Hill Decree*. Edelman did not reference Section 29 in her Complaint, nor did the District Court expressly described it in referencing the water rights decreed to Edelman in the *Hill Decree*.

23. On June 25, 1907, Homer McCullough and his wife Alice McCullough conveyed to the Ruby Valley Irrigated Farms Company the north half of Section 29 and the north half and the northwest quarter of the southeast quarter of Section 30. The conveyance included “all water, water rights, ditches, dams and ditch rights there unto belonging or in anywise appertaining, but more especially those rights existing or heretofore used from Indian Creek and Mill Creek and the Ruby River.” (Ex. B-8). The conveyance deed does not reference any water rights reserved to the grantor.

24. According to its Articles of Incorporation, Ruby Valley Irrigated Farms was formed on June 13, 1907 for various agriculture purposes, including to “purchase, raise, sell and deal in cattle, sheep, horses and other livestock.” (Ex. 102, p. 2). At the time of its formation, Homer McCullough was the company’s largest shareholder. (Ex. 102, p. 4).

25. On February 13, 1916, Mary Scarritt (“Scarritt”) acquired the north half of Section 30 along with other property by a sheriff’s deed. (Ex. B-9). The deed to Scarritt included “all water and water rights, ditches and ditch rights thereunto belonging or in any wise appertaining” to the property. (Ex. B-9, at BL 034).

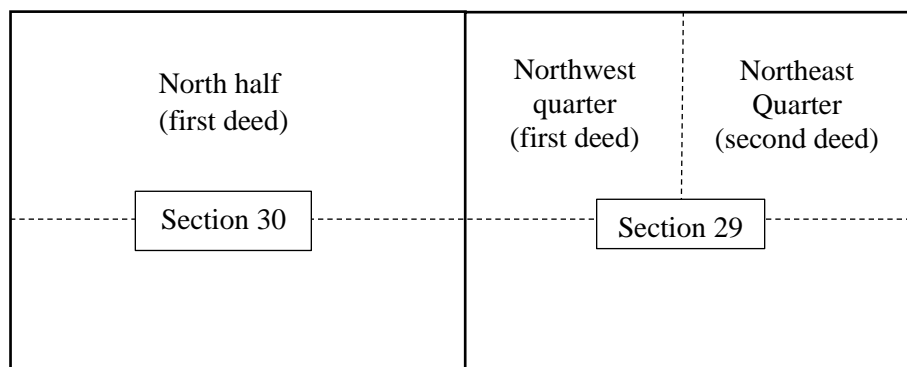
26. On March 25, 1916, Scarritt executed three deeds and recorded them the next day in succession. In the first deed, Scarritt conveyed to Three Creeks Ranch Company (the “Ranch Company”) property that included the northwest quarter of Section 29, and all of the north half of Section 30, and certain other lands. The deed for this conveyance was recorded on April 15, 1916 at 1:00 P.M. (Ex. B-10). The granting clause includes a provision that says:

[T]ogether with all water and water rights, ditches and ditch rights thereunto belonging or in any way appertaining, *the source of which water is the Ruby River and the ditches which convey the same but from no other source.*

(Ex. B-10, at BL 037) (emphasis added). The land described in the deed includes the land Fraser now owns in Section 30. The land described does not include the northeast quarter of Section 29, which was part of the conveyance from Edelman to McCullough.

27. The Ranch Company, the grantee under the first Scarritt deed, was organized on February 21, 1916, for various purposes, including the use of “the waters of Wisconsin Creek, Indian and Mill Creeks and the Ruby River, taken therefrom at points as now used, and other points convenient to the lands of said Company, all of said waters and lands being located within Madison County, Montana.” (Ex. F, at BL 104).

28. Scarritt’s second deed also conveyed land to the Ranch Company. The land is described as portions of numerous sections in Township 4 South, Range 5 West. The deed for this conveyance was recorded on April 15, 1916 at 1:05 P.M. (Ex. D). The legal description did not include any land in Section 30. It did include the northeast quarter of Section 29, which was part of the conveyance from Edelman to McCullough, immediately east of the portion of Section 29 described in the first deed. The following diagram generally illustrates the orientation of the parcels referenced in Sections 29 and 30 for the first deed and the second deed:



29. Unlike the first deed, the second deed to the Ranch Company specifically and expressly reserved to Scarritt the water rights appurtenant to the land described in the deed by stating:

Excepting and reserving to the grantor, however, all the water, water rights, ditches and ditch rights, dams, reservoirs and reservoir sites in any wise thereunto belonging or appertaining to the real estate hereinbefore described.

(Ex. D).

30. The land described in Scarritt's second deed to the Ranch Company does not include any of the land now owned by Fraser, nor does the land overlap with the land described in the first deed. With respect to Indian Creek, the land described in the second deed – which contains the express water rights reservation – is east and upstream from the land described in the first deed.

31. Scarritt's third deed conveyed to the Three Creeks Water Company (the "Water Company") water rights appurtenant to certain property (recorded April 15, 1916 at 1:10 P.M.). (Ex. E). The deed describes the land to which the water rights were appurtenant to at the time of the conveyance. The deed does not describe the water source or sources for water rights. The land described in the deed for purposes of identifying water rights conveyed to the Water Company does not include any of the land Scarritt described in the first deed to the Ranch Company. The water rights Scarritt conveyed to the Water Company include only the water rights Scarritt severed and reserved in the second deed to the Ranch Company. (Ex. E).

32. The legal description used in the third deed to identify the water rights conveyed to the Water Company does not include any of the land Edelman described in her Complaint in the *Hill Decree*.

33. The Water Company, the grantee under the third deed, was organized on February 21, 1916, the same day as the Ranch Company. The Water Company's Articles of Incorporation identify the source waters for its water supply as:

Wisconsin Creek, Indian Creek and Mill Creek, in the County of Madison and State of Montana, but more especially those waters and reservoirs

heretofore owned by Ruby Valley Irrigated Farms Company, and later owned by Mary W. Scarritt.

The Articles go on to describe by legal description the lands to which the water rights are “attached to.” (Ex. G, at BL 110). The legal description does not include land described in Edelman’s Complaint, nor does it include Fraser’s property. The Articles do not mention the Ruby River as a source of water rights.

34. The Water Company filed statements of claim in the current statewide adjudication claiming ownership of the two Edelman water rights, evidenced by abstracts of water right claims. (Ex. M (abstracts); Tr. 1:291:10-12 (Mel Banks)). The statements of claim are for irrigation use. The parties did not offer evidence documenting whether the Water Company also filed statements of claim for any decreed stock water rights.

35. In 1954, the State of Montana completed a Water Resources Survey (“WRS”) for Madison County. The color shading on the WRS map indicates that as of the date of the survey, the northeast quarter of Section 29 was irrigated with water supplied from Three Creeks Water Company.⁶ (Ex. N-1).

36. According to an excerpt of the WRS in evidence, the Water Company also acquired two water rights previously decreed to Marie Edelman from Mill Creek. (Ex. N, at BL 303). The parties did not offer any other evidence about these water rights.

37. Following various intermediate conveyances, on December 29, 1932, Three Creeks Realty Company (the “Realty Company”) acquired property in Sections 29 and 30 and various other properties in the same vicinity, with appurtenances.

38. On December 1, 1944 (recorded on March 14, 1945), the Realty Company conveyed property it owned in Section 30, excepting a triangle in the northeast corner

⁶ Bradley speculates in its Proposed Findings of Fact and Conclusions of Law that the “Scarritt conveyance to the Three Creeks Water Company of the water appurtenant to the NE¼ of Section 29 appears to be the basis for the Three Creeks Water Company’s claim to ownership of the Edelman decreed rights from Case 741.” (Doc. 62.00, at 10). As authority, Bradley cites Exhibit M, a statement of claim for claim no. 41C 190891-00, an April 20, 1866 water right claim owned by Three Creeks Water Co. This claim is not at issue in this case and has not yet been included in a Water Court preliminary decree. Moreover, the place of use described on the claim abstract does not include the land Edelman described in her complaint in the Hill Decree litigation.

east of the county road, to Frank D. Hunter and Anna C. Hunter. (Ex. B-13). This deed contains “together with” language that includes appurtenances, including a specific reference to “water rights.” The deed also contains language in a clause separate from the granting clause that states:

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, *except water rights*, unto the said parties of the second part...

(Ex. B-13, at BL 047) (emphasis added).

Indian Creek Hydrology

39. Indian Creek is a tributary of the Ruby River. Indian Creek flows generally west out of the Tobacco Root Mountains to its confluence with the Ruby River. Along its course, the channel of Indian Creek passes through Fraser’s property. East and upstream from Fraser’s property, the Indian Creek channel also passes from east to west through Section 29. (Ex. NN, at BL 632; Ex. 70; Ex. N-1).

40. Indian Creek is one of several tributaries to the Ruby River in the Sheridan area. Mill Creek is the Ruby River tributary immediately south of Indian Creek. Wisconsin Creek is a tributary immediately north. The Ruby River flows generally from south to north, so Mill Creek is the southern and most upstream of the three tributaries. Wisconsin Creek is the northern and most downstream. Indian Creek is the middle of these three Ruby River tributaries. (Ex. N, at BL 305).

41. As part of the 1905 *Hill Decree* the District Court made findings of fact about Indian Creek’s hydrology. Specifically, the District Court found that after high water surface flows in Indian Creek, flows generally cease about two miles above the property described by Edelman in her Complaint. The evidence at the evidentiary hearing before the Water Court was generally consistent with Judge Callaway’s findings. (*E.g.*, Tr. 1:200:18-25 (N. Todd)). While the witnesses with firsthand knowledge of water distribution mostly agreed that during spring high water surface flows in Indian Creek historically reached what now is Fraser’s property, consistent surface flows largely cease after high water. (Tr. 1:21:10-12 (D. Bieroth); 1:105:11-15 (K. Yecny)). Neither party

offered any flow records, so the testimony of the witnesses and the findings in the 1905 proceeding represent the extent of the factual record.

42. Several irrigation ditches bisect Indian Creek upstream from the Fraser property. The first ditch is called the Thompson Ditch. The Thompson Ditch conveys water from the Ruby River. The Thompson Ditch traverses several streams that flow generally west out of the mountains, including Indian Creek. A control structure exists at the confluence of the Thompson Ditch and Indian Creek. The structure allows water from Indian Creek to be diverted into the Thompson Ditch before Indian Creek reaches the Fraser Property. (Tr. 1:61:17-22 (D. Bieroth)).

43. Further upstream on Indian Creek is the Duncan-Edelman Ditch. The Vigilante Canal crosses Indian Creek even further upstream from the Fraser property.

44. During at least certain times of the year, flows from Indian Creek reach the Fraser property. (Tr. 1:198:3-5 (N. Todd)).

45. The Molitor Ranch, one of Fraser's other predecessors constructed a corral during the 1950s that allowed livestock to drink from Indian Creek when water was available. (Ex. 47; Tr. 1:173:2-25 (L. Edmiston); Tr. 3:67:3-15 (B. Davis)).

Indian Creek Water Rights Administration

46. Indian Creek is administered by a water commissioner appointed by the District Court. Del Bieroth, the current water commissioner, and Ken Yecny, the former water commissioner, testified about the practice of administering water under the *Hill Decree*.

47. The water commissioners have historically administered Indian Creek east of and upstream from the Vigilante Canal. Bieroth does not administer water rights on Indian Creek downstream from the Vigilante Canal. (Tr. 1:20:13-18 (D. Bieroth)).

48. Additional findings of fact are included in the conclusions of law as necessary.

ISSUE

What are the elements of water right claim 41C 30133316?

CONCLUSIONS OF LAW

1. Each finding of fact is supported by a preponderance of evidence.
2. The Water Use Act allows district courts addressing water distribution controversies to certify the matter to the Water Court. The Water Court then adjudicates the existing rights involved in the controversy. Upon completion of the water rights determination, the Water Court returns a decision to the district court, together with “a tabulation or list of the existing rights and their relative priorities.” Section 85-2-406(2)(b), MCA.
3. The Water Court has subject matter jurisdiction over the determination of existing water rights pursuant to § 3-7-224(2), MCA. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 307, 367 P.3d 732, 739 (“the Water Court has authority to determine which parties and rights are involved in a water distribution controversy certified by a district court”).
4. Water right claim 41C 30133316 is a claim for an “existing right” as defined in § 85-2-102(13), MCA because it is based on a statement of claim with a claimed priority date prior to July 1, 1973. Fraser timely filed the statement of claim under the provisions of House Bill 110 (“HB 110”), one of two statutes passed by the Montana legislature to provide a supplemental claim filing period for certain types of exempt rights. Fraser timely filed claim 41C 30133316 under the provisions of HB 110, as codified. Section 85-2-222, MCA.
5. The statement of claim Fraser filed is prima facie proof of its content until issuance of a final decree. Section 85-2-227(1), MCA. Pursuant to this statute, the prima facie elements of claim 41C 30133316, as originally filed, include a June 11, 1865 priority date to use water from Indian Creek for direct from source stock water use, with a period of use extending from January 1 to December 31 each year. The point of

diversion and place of use are within Fraser's property located in the southwest quarter of the northeast quarter of Section 30, Township 4 South, Range 5 West, Madison County.

6. Fraser amended claim 41C 30133316 to modify the priority date to June 11, 1864. The amended date has prima facie status subject to modification by the Water Court. Section 85-2-227(1), MCA.

7. To overcome the prima facie status of the claim, Bradley must prove by a preponderance of evidence that one or more elements of the claim are incorrect. Rule 19, W.R.Adj.R. Bradley first seeks to meet this burden by attacking the evidentiary basis used by Fraser for the June 11, 1864 priority date.

8. As required by the Water Use Act, Fraser provided evidentiary support for the claim. Section 85-2-224(2), MCA. The evidence includes the "Declaration of Homestead" William Tiernan dated June 11, 1869, and filed on June 12, 1869. Fraser relies on the Declaration of Homestead as the basis for the June 11, 1864 priority date. Fraser calculates this priority date by subtracting five years from the date of the Declaration of Homestead. (Ex. 7, at 6). Fraser asserts this date is proper because the Homestead Act required five years of occupancy prior to patent. Act of May 20, 1862, 12 Stat. 392, *repealed* Pub. L. 94-579, Title VII, § 702, Oct. 21, 1976.

9. Bradley contends the documents Fraser filed in support of his statement of claim do not support this five-year lookback theory because Fraser's predecessors in interest did not obtain title under the Homestead Act to the property Fraser now owns. Instead, the only land the Tiernans' acquired under the Homestead Act is the N2NW and NWNE of Section 30, and other undefined lands, patented on December 10, 1880 (filed January 5, 1882). (Ex. 8, p. 17).

10. Documents filed in connection with a Homestead Act application may provide evidentiary support to establish a priority date. *Hill v. Merrimac Cattle Co.*, 211 Mont. 479, 503, 687 P.2d 59, 72 (1984);⁷ *Danreuther Ranches v. Farmers Coop. Canal*

⁷ In *Hill*, the Supreme Court explained that a Homestead Act patent "does not depend on either the building of ditches or actual application of water," so the patent itself is not evidence of intent to put water to beneficial use as of a specific date. *Hill*, 211 Mont. at 503. The Court did note that documents filed in support of an application may provide information about water use. *Id.* In contrast, "[i]nstead of

Co., 2017 MT 241, 389 Mont. 15, 403 P.3d 332. However, Fraser has not proved the Declaration of Homestead was a document filed in connection with a Homestead Act application. Additionally, Fraser does not cite any case or law supporting a lookback theory authorizing the Water Court to fix a priority date five years prior to the date of a Homestead Act patent as a matter of law.

11. The Homestead Act permitted a qualified person to enter unappropriated public lands for the purpose of establishing a homestead, with a maximum allowable claim of one-quarter section (160 acres). 43 U.S.C. § 161 (*repealed*). The 1862 Homestead Act did not require irrigation or other water use as a condition to patent. Moreover, even if the Court were to assume the Tiernans, as Fraser’s predecessors, had livestock on their property five years before the United States issued a Homestead Act patent, deducting five years from the patent date only results in a date of occupancy of December 10, 1875, which would result in a priority date junior to what Fraser asserts.

12. Bradley’s correctly argues the United States did not issue a Homestead Act patent to the specific land Fraser now owns. However, the parcel patented under the Homestead Act was one piece in a larger assembly of land that became the Tiernans’ ranch, and which ultimately was conveyed to Edelman as a single property. The 1880 Homestead Act patent is relevant to show part of the history of assembling the property, but does not support Fraser’s claimed priority date.

13. Bradley also argues Fraser’s theory to make the priority date five years more senior misconstrues the Declaration of Homestead relied on by Fraser. (Doc. 35.00, at 4, ¶ 3). The Homestead Declaration is not a patent signed by the President or any other federal official documenting compliance with any conditions precedent under the Homestead Act. Rather, it says it was filed “under and by virtue of laws of the Territory of Montana.” (Ex. 8, at 20). Montana law has long provided for the filing of declarations of homestead to protect certain property from creditors on certain conditions. To “obtain

the residence on the property that the Homestead Act required, the Desert Land Act operated through proof of effort and intent to irrigate the claimed acreage.” *Twin Creeks Farm & Ranch, LLC v. Petrolia Irrigation Dist.*, 2022 MT 19, ¶ 5, 407 Mont. 278, 280, 502 P.3d 1080, 1081.

the benefit of the homestead exemption, the owner must file a declaration of homestead with the county clerk and recorder's office.” *In re Snyder*, 2006 MT 308, ¶ 8, 335 Mont. 11, 13, 149 P.3d 26, 27.

14. The Declaration of Homestead is a sworn statement by Tiernan as to occupancy of 320 acres. The language of the declaration does not describe any occupancy of property prior to the June 11, 1869 date on the document. Rather, it only states the Tiernans’ intent to possess and occupy the property as a homestead for himself and his family “on, from and after the date of this declaration.” (Ex. 8, p. 20). The earliest priority date the Declaration of Homestead supports as to possession and occupancy is June 11, 1869, so it does not support Fraser’s claimed priority date.

15. Fraser’s statement of claim and the evidentiary record include two patents for the Tiernan property not issued under the 1862 Homestead Act. The United States issued a patent to Andrew McCenan on July 30, 1872 for land that includes what now is Fraser property in Section 30. The patent states it was issued pursuant to the “Act of Congress approved July 2, 1862.” This statute refers to the Morrill Act of 1862, 12 Stat. 503.⁸ Unlike the Homestead Act, the Morrill Act provided for the sale of lands, including lands allocated to other states to fund higher education institutions.⁹ The patent was recorded on February 12, 1877. (Exhibit S, BL 0350, BL 0355; Exhibit B-2). The patent also was not issued under the Homestead Act of 1862, so, at best, it only establishes occupancy as of July 30, 1872, and does not support Fraser’s claimed priority date.

16. On December 10, 1866, George Orr and Andrew McCune deeded to Ellen Tiernan, William Tiernan’s wife, property described as 320 acres. (Ex. 8, p. 19). Because the deed does not contain a legal description tied to the public land survey system, the deed alone does not prove occupancy of land that includes what Fraser now owns. The

⁸ The full title of the Morrill Act of 1862 is “An Act Donating Public Lands to the Several States and Territories which may provide Colleges for the Benefit of Agriculture and the Mechanic Arts.”

⁹ See generally, Congressional Research Service, “The U.S. Land-Grant University System: Overview and Role in Agricultural Research” (Updated Aug. 9, 2022) at 5 (explaining background of Morrill Act), available at: <https://crsreports.congress.gov/product/pdf/R/R45897>.

deed also does not contain any representations or other factual support to prove water use as of 1866. However, because the United States did issue a patent to Andrew McCenan six years later, the deed links Ellen Tiernan to the grantee of the patent of property that now includes Fraser's land.

17. The United States also issued to William Tiernan a patent for the east half of the northeast quarter of Section 30 on November 10, 1882 (recorded on February 12, 1887). (Ex. S, BL 0349). Although Fraser did not include the actual patent in his claim filing, the filing includes a BLM summary sheet showing the United States issued the patent under the authority of an 1820 Act providing for the sale of the public lands in full sections and partial sections for payment of \$1.25 per acre. Act of Apr. 24, 1820, 16 Cong. Ch. 51, § 3, 3 Stat. 566. This patent for a portion of the Fraser property was not issued under the Homestead Act of 1862, and does not establish occupancy prior to November 10, 1882, and does not support Fraser's claimed priority date.

18. Maria Edelman was the Tiernan's successor in interest as to the property described in the deed dated April 28, 1892 (recorded April 30, 1892), which included the north half of Section 30. The property described in Edelman's Complaint filed in the *Hill Decree* litigation includes the north half of Section 30. (Ex. P, at BL 330).

19. The District Court decreed two water rights to Edelman in the *Hill Decree*. The first decreed right is for 50 miner's inches of water with an April 20, 1866 priority date. The second decreed right is for 100 miner's inches with a June 1, 1896 priority date.

20. Interpretation of a prior court decree is an issue of law. *Granite Cnty. Bd. of Comm'rs v. McDonald*, 2016 MT 281, ¶ 19, 385 Mont. 262, 383 P.3d 740.

21. Edelman actively participated in the litigation by voluntarily seeking to intervene, and by being represented by her own attorney at the June 1905 trial. (Ex. C, at BL 084). She intended her participation to "settle and determine all of the rights of all of the parties claiming an interest in and to the waters of said Indian Creek for irrigating and other useful and beneficial purposes." (Ex. P, ¶ VIII, BL 331-332).

22. The *Hill Decree* is detailed and carefully constructed. While the District Court did not specifically mention an instream stock water right, the stock water right

Fraser claims is within the scope of what the District Court decreed. As Edelman requested, the *Hill Decree* describes the purpose of use as including irrigation and “for other useful and beneficial purposes.” (Ex. C, BL 087). In several cases, including unchallenged master’s reports, the Water Court has concluded the language “for other useful and beneficial purposes” is sufficiently broad to include stock water use. *In re Granger Ranches LP*, Case 41F-6024-A-2021, 2022 Mont. Water LEXIS 699 (Order Amending and Adopting Masters Report); *In re Tucker*, 2019 Mont. Water LEXIS 59 (master’s report); *In re Red Dog Ranch LLC*, 2020 Mont. Water LEXIS 682 (master’s report). In light of its historical context, and the language used in Edelman’s Complaint and in the District Court’s order, the District Court’s order in the *Hill Decree* overcomes the prima facie status of Fraser’s claimed priority date.

23. Based on the *Hill Decree*, this Court concludes the priority date for Fraser’s claim 41C 30133316 is April 20, 1866. None of the chain of title documents admitted into evidence establish a priority date more senior than this date, nor do they establish that “a proper evidentiary basis did not exist for the decree” the District Court entered assigning this priority date. *Hill v. Merrimac Cattle Co.*, 211 Mont. at 499.

24. The District Court’s conclusion decreeing Edelman an April 20, 1866 priority date was conditioned on the right being limited to high or flood water:

The Court finds, however, that when the high, or flood, waters subside the waters of said Indian Creek sink about two miles above the lands of the intervenor, and that after July fifteenth of each year no water if allowed to remain in said creek, after the waters needed by the prior appropriators is taken out, will reach the intervenor in any useful quantity, if any whatsoever will reach her in any season after that date. If, in any season, it be ascertained at any time that the amount of water properly apportioned to plaintiff and which she would be entitled to if it would reach her is so small in quantity as not to be beneficial to her, then the water is to be distributed to other appropriators who may make a beneficial use thereof.

(Ex. C, at BL 087).

25. The factual bases for the remark are consistent with stream conditions on Indian Creek and with the use and distribution of Indian Creek water subsequent to the

Hill Decree. The weight of the evidence at the evidentiary hearing in the present case confirms the District Court’s finding that surface flows in Indian Creek do not consistently reach the Fraser property in periods of the year other than high water.

26. The *Hill Decree* does not specifically set July 15 as the end of the period of use for Edelman’s instream stock water right. Instead, it sets limits on making a call as to junior appropriators after that date. It precludes using the right to make a call on junior appropriators after July 15, absent proof by the owner of the right that the call would result in a measure of water that could be put to beneficial use. The condition leaves in place the common law futile call doctrine prior to July 15 each year, with the burden on junior appropriators to prove futility, but shifts the burden to the owner of the Edelman right after July 15 based on the District Court’s findings as to the stream conditions, which this Court confirms. *See generally, Kelly v. Teton Prairie LLC*, 2016 MT 179, ¶ 19, 384 Mont. 174, 376 P.3d 143 (“a call for water is deemed futile if the amount of water necessary to meet an appropriation will not reach a senior appropriator's point of diversion because of carriage losses”). This limitation exists only as to “other appropriators,” meaning appropriators addressed in the *Hill Decree*. The condition is not applicable to appropriators who do not trace their rights to the *Hill Decree* unless and until any such party proves entitlement to the protection of the condition in some other future proceeding before the Water Court.

27. The Water Court has authority to include information remarks when “necessary to fully define the nature and extent of the right.” Section 85-2-234(6)(i), MCA. Failure to include the remark on claim 41C 30133316 would result in a claim that does not reflect historical hydrologic conditions or historical use. The April 20, 1866 priority date for claim 41C 30133316 is conditioned such that it only may be used to curtail junior water rights prior to July 15 each year unless Fraser, or any successor owner of claim 41C 30133316 asserting a call after July 15, proves the call would not be futile as to junior water rights decreed in the *Hill Decree*.

28. The Court's conclusion that claim 41C 30133316 was decreed by the District Court, with conditions, moots Bradley's argument that the *Hill Decree* bars Fraser's claim under the doctrine of *res judicata*.

29. Bradley makes two arguments that Fraser's claimed stock water right was severed from the property after the *Hill Decree*, breaking Fraser's chain of title link to the right decreed by the District Court. Bradley's first severance argument contends the first 1916 deed from Scarritt to the Land Company severed and reserved the water rights to Scarritt. (Doc. 35.00, at 5, ¶ 9-11). Bradley bases this argument on the deed's language stating it includes "all water and water rights, ditches and ditch rights thereunto belonging or in any wise appertaining, the source of which water is the Ruby River *and the ditches which convey the same but from no other source*." (Ex. B-10, emphasis added). The Court does not accept this contention.

30. Under Montana law, water rights are an appurtenance to land that transfers with a property conveyance unless expressly reserved. *Sweetland v. Olsen*, 11 Mont. 27, 29, 27 P. 339, 340 (1891); § 85-2-403(1), MCA (codifying rule). The first deed from Scarritt to the Land Company conveying property in Section 30 does not contain an express reservation of water rights. (Ex. B-10). However, in certain limited circumstances, Montana law recognizes an implied reservation of water rights when a deed includes an express conveyance of water rights. *Kofoed v. Bray*, 69 Mont. 78, 84, 220 P. 532, 534 (1923). As discussed in the Order on Pending Motions, whether Scarritt impliedly reserved rights depends on the facts surrounding the conveyance. (Order on Pending Motions, at 8-10; 2022 Mont. Water LEXIS 544, *11).

31. Based on the facts in the evidentiary record, the language used in the first deed did not reserve water rights to Scarritt. The language of the deed uses the restrictive clause "and from no other source" in the context of ditch rights, not water rights. (Ex. B-10, emphasis added). A ditch right is a form of easement across property owned by another. *Wills Cattle Co. v. Shaw*, 2007 MT 191, ¶ 26, 338 Mont. 351, 167 P.3d 397.

32. Based on the 1881 deed from Henry Morier, Tiernan (Edelman's predecessor) owned water rights and ditch rights from the Ruby River. (Ex. 8, p. 24). The

language makes clear the rights to access and convey the Ruby River water rights were retained in the first deed. Such access did not conflict with the plans for the Water Company because the Articles state it relied on Mill Creek, Indian Creek, and Wisconsin Creek as water sources. The Articles do not mention the Ruby River as a source of company water so the deed language created no conflict by reserving the ditch right to access the water source necessary to continue to use them. However, by limiting ditch rights to access only Ruby River water, the deed cut off any ditch rights Edelman had to water rights decreed from Mill Creek. *See* Finding of Fact, ¶ 36. Thus, construing the language as limited to ditch rights makes sense.

33. Additionally, the third deed, which conveyed the reserved water rights to the Water Company, does so by reference to water rights appurtenant to legally described parcels of property. None of the described parcels are part of the land described in Edelman's Complaint, which is how the District Court described the rights decreed to Edelman. The evidentiary record does not contain any instrument by which Edelman or her successors severed the water rights decreed as appurtenant to her property and conveyed them to any property described in the third deed. Bradley asserts this was done in Edelman's deed to McCullough, but the record does not prove Edelman's decreed rights ever were made appurtenant to land Edelman owned in Section 29.

34. The lack of a severance and reservation of water rights to Scarritt also is undercut by the Scarritt's nearly simultaneous second deed to the Ranch Company, which contains an express reservation of water rights and shows Scarritt knew how to draft an express water rights severance and reservation. Additionally, given the high and flood water condition imposed on Edelman's water rights by the District Court, it makes little sense for the Water Company to acquire water rights that risk curtailment once high water passes each year.

35. Finally, Bradley's argument that Scarritt severed and conveyed Edelman's water rights to the Water Company also is negated by the apparent lack of any stock water right filing by the Water Company in the adjudication process, even though it did file on irrigation rights. Bradley's evidence fails to overcome the presumption that the

stock water right decreed by the District Court remained appurtenant to what now is Fraser's property.

36. Bradley's second severance argument, asserts the "to have and to hold" clause in the 1944 deed from the Realty Company to Frank D. and Anna C. Hunter "specifically excepts all water rights." (Doc. 35.00, at 5, ¶ 8). (Bradley Proposed Findings at 25.) Bradley's interpretation is not correct because it conflicts with the granting clause, which includes "water rights" without any limitation. (Ex. B-13, at BL 047). The clause Bradley relies on contains the warranties of title as to the rights granted. To properly harmonize the two clauses and to give effect to them both, as the Court must do, the exception Bradley cites applies to the warranties of title, not to the extent of the grant. Section 28-3-201, MCA; *Hennen v. Omega Enters.*, 264 Mont. 505, 509, 872 P.2d 797, 799 (1994) (the "law favors giving effect to each provision of a contract").

37. Neither of Bradley's severance arguments change the Court's conclusion that the correct priority date for claim 41C 30133316 is April 20, 1866, as decreed in the *Hill Decree*, with conditions. Pursuant to the certification statute, the claim should be included on the tabulation of enforceable water rights from Indian Creek included with this Order. Section 85-2-406(2)(b), MCA.

ORDER

Based upon the foregoing, it hereby is ORDERED that:

1. The priority date for claim 41C 30133316 is modified to April 20, 1866. The "type" of right is modified from "use" to "decreed."¹⁰ The period of use remains January 1 to December 31 each year, subject to the condition that the right is a high water right. After July 15 each year, claim 41C 30133316 cannot be the basis for a call on junior water users without the claim owner first showing that curtailment of such users would result in water reaching the place of use amounts that could be put to beneficial use. This

¹⁰ Ultimately "type" of right is irrelevant for purposes of a final decree because at that point all existing rights in a basin are decreed by the Water Court. See *Petrich Fam. P'ship v. Trout Unlimited*, 2023 Mont. Water LEXIS 116, *8 (Order on Mot. for Summary Judgment). However, because claim 41C 30133316 will be included in the upcoming preliminary decree for Basin 41C, the "decreed" type appears on the abstract to make clear it was addressed by the District Court in the Hill Decree.

condition is memorialized on the claim abstract with the following priority date commissioner remark:

AFTER JULY 15 THIS RIGHT MAY NOT BE USED TO MAKE A CALL ON JUNIOR WATER USERS WITHOUT FIRST SHOWING THAT CURTAILMENT OF SUCH USERS WOULD RESULT IN WATER REACHING THE PLACE OF USE IN AMOUNTS THAT CAN BE PUT TO BENEFICIAL USE.

2. This case is CLOSED and returned to the District Court.

A modified version of the abstract for claim 41C 30133316 is attached as Exhibit A to this Order to confirm that the modifications to the claim have been made in the State's centralized water right record system.

A copy of the tabulation of water rights that includes claim 41C 30133316 is attached as Exhibit B to this Order.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
RUBY RIVER
BASIN 41C

Water Right Number: 41C 30133316 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: WILLIAM R FRASER
PO BOX 36
SHERIDAN, MT 59749

Priority Date: APRIL 20, 1866
AFTER JULY 15 THIS RIGHT MAY NOT BE USED TO MAKE A CALL ON JUNIOR WATER USERS WITHOUT FIRST SHOWING THAT CURTAILMENT OF SUCH USERS WOULD RESULT IN WATER REACHING THE PLACE OF USE IN AMOUNTS THAT CAN BE PUT TO BENEFICIAL USE.

Type of Historical Right: DECREED

Purpose (use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: INDIAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	30	4S	5W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF INDIAN CREEK.

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNE	30	4S	5W	MADISON

Remarks:

THE FOLLOWING POTENTIAL ISSUES WERE IDENTIFIED DURING CLAIMS EXAMINATION OR DURING PREVIOUS WATER COURT PROCEEDINGS.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41C DECREE ISSUED 10/30/1990.

Exhibit B to Order in Water Court Case DCERT-0004-WC-2021

WRNUMBER	OWNERS	PRIORITY	FLOW RATE	UNITS	VOLUME	TWP_RNG	SECNO	QSECTION
41C 193833 00	SHERIDAN, TOWN OF	1864-10-15	33.66	GPM	54.75	4S5W	24	SENWNE
41C 39186 00	BRADLEY LIVESTOCK LC	1864-10-15	1.18	CFS		4S5W	23	NESESW
41C 193832 00	SHERIDAN, TOWN OF	1866-04-10	112.2	GPM	181.48	4S5W	24	SENWNE
41C 9252 00	CHARLES V LOGIE; NANNETTE M LOGIE	1866-04-10	2.25	CFS		4S4W	18	NESWSW
41C 39183 00	BRADLEY LIVESTOCK LC	1866-04-15	1.25	CFS		4S5W	24	NENENE
41C 35483 00	JENNIE L EBERLINE; RICHARD D EBERLINE	1866-04-15	1.18	CFS		4S5W	24	NWNENE
41C 193834 00	SHERIDAN, TOWN OF	1866-04-15	33.66	GPM	54.75	4S5W	24	SENWNE
41C 28992 00	CLOVER MEADOWS LLC; COLTON J HELLWINKEL; MATTHEW A HELLWINKEL	1866-04-16				4S5W	22	SE
41C 199036 00	JANE W YECNY; KENNETH L YECNY	1866-04-16				4S5W	24	NENWNE
41C 28991 00	CLOVER MEADOWS LLC; COLTON J HELLWINKEL; MATTHEW A HELLWINKEL; ANIKA WARD	1866-04-16	1.25	CFS		4S5W	22	NESESE
41C 196989 00	AHERN, JOHN F FAMILY TRUST; PHYLLIS F SAXON; SEAFORTH NO 1 HOMEOWNERS							
41C 196989 00	ASSN INC	1866-04-17	1.25	CFS		4S5W	24	NESENW
41C 196989 01	EMMA C BORNTREGER; PAUL M BORNTREGER; JANET MARSH; BRADLEY SCHWEND	1866-04-17	1.25	CFS		4S5W	24	NESENW
41C 196257 00	EMMA C BORNTREGER; PAUL M BORNTREGER; JANET MARSH; BRADLEY SCHWEND	1866-04-17				4S5W	23	SE
41C 190891 00	THREE CREEKS WATER CO	1866-04-20	1.25	CFS		4S5W	22	SWSWSE
41C 30133316	WILLIAM R FRASER	1866-04-20				4S5W	30	SWNE
41C 2389 00	DALE STACY	1866-04-25	0.75	CFS		4S5W	27	NWNENW
41C 210698 00	BRADLEY LIVESTOCK LC	1866-05-01	7.5	CFS		4S5W	29	NWSENW
41C 39185 00	BRADLEY LIVESTOCK LC	1866-05-01	1	CFS		4S5W	23	NENESE
41C 193770 00	BRADLEY LIVESTOCK LC	1866-12-31	15	CFS		4S5W	29	NWSENW
41C 31203 00	ROBERT R TIPTON; TONYA P TIPTON	1867-04-10	336.6	GPM		4S5W	24	NWNENE
41C 155814 00	BROWN, DOROTHY REVOCABLE LIVING TRUST	1867-04-10	112.2	GPM		4S5W	24	NENWNE
41C 190892 00	THREE CREEKS WATER CO	1867-04-15	1.25	CFS		4S5W	22	NWSESE
41C 23586 00	KEVIN T PEARCE	1868-04-10	1.25	CFS		4S5W	24	NWNENE
41C 196123 00	BOKEN FAMILY TRUST	1868-04-15				4S5W	22	SWSWSE
41C 196128 00	BOKEN FAMILY TRUST; KITT M DALE	1868-04-15	1.25	CFS		4S5W	22	NESWSE
41C 28990 00	CLOVER MEADOWS LLC; COLTON J HELLWINKEL; MATTHEW A HELLWINKEL; ANIKA WARD	1870-04-10	0.5	CFS		4S5W	22	NESESE
41C 2390 00	DALE STACY	1871-04-10	0.5	CFS		4S5W	27	NENENW
41C 31204 00	ROBERT R TIPTON; TONYA P TIPTON	1872-04-10	0.56	CFS		4S5W	24	NWNENE
41C 195016 00	BOKEN FAMILY TRUST; MORSE LAND CO LLC	1872-04-15				4S5W	23	NESWSW
41C 193774 00	BOKEN FAMILY TRUST; MORSE LAND CO LLC	1872-04-15	1.5	CFS		4S5W	23	NESWSW
41C 190893 00	THREE CREEKS WATER CO	1872-04-16	0.5	CFS		4S5W	22	SWSWSE
41C 196991 01	EMMA C BORNTREGER; PAUL M BORNTREGER; JANET MARSH; BRADLEY SCHWEND	1872-04-20	337	GPM		4S5W	24	NESENW
41C 196991 00	AHERN, JOHN F FAMILY TRUST; PHYLLIS F SAXON; SEAFORTH NO 1 HOMEOWNERS							
41C 196991 00	ASSN INC	1872-04-20	336.62	GPM		4S5W	24	NESENW
41C 196251 00	EMMA C BORNTREGER; PAUL M BORNTREGER; JANET MARSH; BRADLEY SCHWEND	1872-04-20				4S5W	24	NESENW
41C 196126 00	BOKEN FAMILY TRUST; KITT M DALE	1872-05-01	0.75	CFS		4S5W	22	SWSWSE
41C 39193 00	BRADLEY LIVESTOCK LC	1879-04-10	1.25	CFS		4S5W	24	NENENE
41C 35488 00	JENNIE L EBERLINE; RICHARD D EBERLINE	1879-04-10	1.25	CFS		4S5W	24	SENWNE
41C 193910 00	TIMOTHY M FUNK; VIRGINIA B FUNK	1880-04-10	0.75	CFS		4S4W	18	NESWSW

41C 39187 00	BRADLEY LIVESTOCK LC BOKEN FAMILY TRUST; MORSE LAND CO	1880-04-10	0.5	CFS	4S5W	23	NESESW
41C 193772 00	LLC	1882-04-10	1	CFS	4S5W	23	NESWSW
41C 39229 00	DAVID L HAJNY; MARIE HAJNY	1882-05-01	1.5	CFS	4S5W	24	SENWNE
41C 39226 00	DAVID L HAJNY; MARIE HAJNY	1882-05-01			4S5W	24	SENWNE
41C 39184 00	BRADLEY LIVESTOCK LC CLOVER MEADOWS LLC; COLTON J HELLWINKEL; MATTHEW A HELLWINKEL;	1883-04-10	1	CFS	4S5W	23	NENESE
41C 28989 00	ANIKI WARD BOKEN FAMILY TRUST; MORSE LAND CO	1885-04-10	0.75	CFS	4S5W	23	SWSWSW
41C 193775 00	LLC	1886-04-10	0.75	CFS	4S5W	23	NESWSW
41C 196253 00	JANET MARSH; BRADLEY SCHWEND	1890-08-31			4S5W	23	SENESE
41C 196988 00	EMMA C BORNTREGER	1890-12-31			4S5W	24	NWNENE
41C 199197 00	FRANK E COLWELL; KAY CARTER COLWELL; DAVID M PEARSON; SHELIA K PEARSON	1892-04-15	224	GPM	4S5W	24	NESENW
41C 26892 00	GEORGE W RICH; JOYCE D RICH PETERSON, STEVEN B & ELIZABETH H TRUST; ELAINE SALISBURY; WILSON	1892-04-15	336.6	GPM	4S5W	24	SENENW
41C 193779 00	SALISBURY	1892-04-15			4S5W	24	S2NW
41C 39191 00	BRADLEY LIVESTOCK LC PETERSON, STEVEN B & ELIZABETH H TRUST; ELAINE SALISBURY; WILSON	1892-04-15	3.75	CFS	4S5W	24	SWNWNE
41C 193778 00	SALISBURY	1892-04-15	1.25	CFS	4S5W	24	NESWNE
41C 199251 00	DAVID L GEIGER; DONNA J TRISHMAN; GEORGE T TRISHMAN	1892-04-15	1.25	CFS	4S5W	24	SWSWNE
41C 39227 00	FRANK E COLWELL; KAY CARTER COLWELL	1892-05-01			4S5W	24	NENENE
41C 39230 00	FRANK E COLWELL; KAY CARTER COLWELL; ROBERT R SHEFFIELD; SISSY L SHEFFIELD	1892-05-01	2.5	CFS	4S5W	24	NENENE
41C 190894 00	THREE CREEKS WATER CO	1894-04-10	2.5	CFS	4S5W	22	SWSWSE
41C 193911 00	TIMOTHY M FUNK; VIRGINIA B FUNK	1895-04-10	0.75	CFS	4S4W	18	NESWSW
41C 2388 00	DALE STACY EMMA C BORNTREGER; PAUL M BORNTREGER; JANET MARSH; BRADLEY SCHWEND	1896-06-01	1.5	CFS	4S5W	27	NWNENW
41C 196256 00	AHERN, JOHN F FAMILY TRUST; PHYLLIS F SAXON; SEAFORTH NO 1 HOMEOWNERS	1896-06-01			4S5W	24	NESENW
41C 196990 00	ASSN INC EMMA C BORNTREGER; PAUL M BORNTREGER; JANET MARSH; BRADLEY SCHWEND	1896-06-01	2.5	CFS	4S5W	24	NESENW
41C 196990 01	THREE CREEKS WATER CO	1896-06-01	2.5	CFS	4S5W	24	NESENW
41C 190895 00	THREE CREEKS WATER CO	1896-06-01	2.5	CFS	4S5W	22	SWSWSE
41C 190896 00	THREE CREEKS WATER CO	1896-06-01	2.5	CFS	4S5W	22	SWSWSE
41C 39192 00	BRADLEY LIVESTOCK LC	1896-06-01	2.5	CFS	4S5W	24	NENENE
41C 39228 00	FRANK E COLWELL; KAY CARTER COLWELL; ROBERT R SHEFFIELD; SISSY L SHEFFIELD	1896-06-01	2.5	CFS	4S5W	24	NENENE
41C 193912 00	TIMOTHY M FUNK; VIRGINIA B FUNK	1896-06-01	1	CFS	4S5W	24	NWNENE
41C 31201 00	ROBERT R TIPTON; TONYA P TIPTON	1896-06-01	1.5	CFS	4S5W	24	NWNENE
41C 35487 00	JENNIE L EBERLINE; RICHARD D EBERLINE	1896-06-01	2.5	CFS	4S5W	24	NWNENE
41C 23587 00	KEVIN T PEARCE	1896-06-01	1.5	CFS	4S5W	24	NWNENE
41C 39181 00	BRADLEY LIVESTOCK LC	1896-06-01	1.25	CFS	4S5W	24	SWNWNE
41C 9254 00	CHARLES V LOGIE; NANNETTE M LOGIE	1896-06-01	4	CFS	4S4W	18	NESWSW
41C 39188 00	BRADLEY LIVESTOCK LC	1896-06-01	2	CFS	4S5W	23	NESESW
41C 39189 00	BRADLEY LIVESTOCK LC CLOVER MEADOWS LLC; COLTON J HELLWINKEL; MATTHEW A HELLWINKEL;	1896-06-01	2.5	CFS	4S5W	23	NENESE
41C 28988 00	ANIKI WARD BOKEN FAMILY TRUST; MORSE LAND CO	1896-06-01	2.5	CFS	4S5W	23	SWSWSW
41C 193773 00	LLC	1896-06-01	2.5	CFS	4S5W	23	NESWSW

41C 196127 00	BOKEN FAMILY TRUST; KITT M DALE	1896-06-01	2.5	CFS		4S5W	22	NESWSE
41C 39180 00	BRADLEY LIVESTOCK LC	1896-07-01	12.5	CFS		4S5W	24	NENENE
41C 204182 00	JTA 2021 TRUST; JAMES R SCHWINDT	1905-07-09	83.3	GPM		4S5W	23	SWSE
41C 204183 00	JTA 2021 TRUST; JAMES R SCHWINDT USA (DEPT OF AGRICULTURE FOREST SERVICE)	1905-07-09				4S5W	23	SWSE
41C 53484 00		1905-10-05				4S3W	6	
41C 193814 00	RUBY OXBOW LLC	1910-12-19	1.88	CFS		4S5W	30	NW
41C 193819 00	MORSE LAND CO LLC	1910-12-19	1.88	CFS		4S5W	30	SESENW
41C 196492 00	CARLSON LAND & CATTLE LLC	1913-10-01	3.38	CFS		4S4W	8	SENENW
41C 196168 00	DEENA J RODEWALD; DONALD R RODEWALD	1918-06-01	3.75	CFS		4S4W	5	SESWSW
41C 196290 00	A SUZANNE NELLEN; THREE CREEKS WATER CO	1919-05-31				4S5W	22	SESESW
41C 193885 00	DAN M DAY; LINDA L DAY; PATRICK A DAY	1944-05-31	49.4	GPM		4S5W	24	SENWNE
41C 193886 00	PATRICK A DAY	1946-07-31	22.5	GPM	3.4	4S5W	24	SENWNE
41C 193831 00	SHERIDAN, TOWN OF	1956-04-01	0.4	CFS	216	4S5W	24	SENWNE
41C 199047 00	LINDA SUE CLARK	1963-04-12	22	GPM		4S5W	24	SENE